

The Brookdale University Hospital and Medical Center and Stanley Rohlehr. Case 29–CA–22466

September 19, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

On November 2, 1999, Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,¹ findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Brookdale University Hospital and Medical Center, Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Marcia Adams, Esq., for the General Counsel.

Peter Conrad, Esq. (Proskauer Rose, LLP), of New York, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in Brooklyn, New York, on September 15, 1999. On a charge filed on December 15, 1998, a complaint was issued on April 13, 1999, alleging that The Brookdale University Hospital and Medical Center (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Letter briefs were filed by the parties on October 21, 1999.

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We do not rely on the judge's finding that Swaby told Rohlehr that he was instructed by Director of Medical Records Jeanette Clark to monitor Rohlehr because of the grievance filed.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation, with a facility in Brooklyn, New York, is engaged in the operation of a hospital. Respondent has admitted, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act. In addition, it has been admitted, and I find, that Local 1199, National Health & Human Service Employees Union, SEIU, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Stanley Rohlehr has been an employee of Respondent for 25 years and is a union delegate and shop steward. For 1 hour each day, from 4 to 5 p.m., he is supervised by Daniston Swaby. During 1998¹ Rohlehr filed a grievance on behalf of another employee, Cindy Lewis. During the third-step hearing Lewis made an accusation of sexual harassment against Swaby.

During November 1998, Rohlehr was having a conversation with employee George Stancu. Swaby called Rohlehr into his office and according to Rohlehr's testimony, told Rohlehr that "having the conversation with Mr. Stancu was not proper and I should be working and he was told to monitor me during the hour of . . . four to five."

During the hearing it was discovered that a diary that Rohlehr brought with him contained entries relevant to the proceeding. The entry for February 3, 1999 stated, "Daniston Swaby, 4:50, does not appear I am doing anything, any work, but he was instructed to monitor me by Miss Clark." The entry for February 10 stated, "Swaby called me a big baby and in discussion said that everything is happening because I represented C. Lewis because no other delegate would take case." Rohlehr testified that he made the entries in the diary on the dates the incidents occurred.

Swaby testified that during November, at approximately 4:30 one afternoon, he observed Rohlehr speaking with three or four other employees. He testified that he told the employees that "it's inappropriate for you guys to be standing around and not working. I said everybody go back to work." He denied that he told Rohlehr that he was told to monitor Rohlehr's work and he denied that Miss Clark instructed him to monitor his work. Jeanette Clark, director medical records, testified that during November she had a meeting of supervisors, which included Swaby, at which time she told the supervisors "to be very diligent about making sure that the staff that we had was giving us a full day's work [and] in particular . . . I asked them to monitor those shifts where there was overlap."

B. Discussion and Conclusions

Rohlehr appeared to me to be a credible witness. He testified that during the meeting with Swaby in November Swaby told him that he was instructed to monitor him during the hour of 4

¹ All dates refer to 1998 unless otherwise specified.

to 5 p.m. Indeed that is not inconsistent with Clark's testimony that she instructed the supervisors to "monitor those shifts where there was overlap," namely, 4 to 5 p.m. Rohlehr conceded that there was no mention of Cindy Lewis during the November conversation. Accordingly, I find that it has not been proven that Rohlehr was singled out during the November conversation. Instead, Clark had instructed the supervisors to monitor the work of all employees during the 4 to 5 p.m. time period.

With respect to the February 1999 incidents, I credit Rohlehr's testimony that he made the entries in his diary on the dates the incidents occurred. I credit his testimony that on February 3 Swaby told him that he was instructed to monitor him by Clark. I further credit Rohlehr's testimony that on February 10 Swaby told him "everything is happening because I represented C. Lewis because no other delegate would take case."

Based on the above, I find that during February 1999 Swaby told Rohlehr that he was instructed by Jeanette Clark to monitor Rohlehr because he filed a grievance on behalf of Cindy Lewis. This constitutes a threat to closely monitor an employee's work because of his union activities, in violation of Section 8(a)(1) of the Act. See *American Crane Corp.*, 326 NLRB 1401 (1998).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By informing Rohlehr in February 1999 that it would be monitoring his work more closely because of his union activities, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

Respondent, The Brookdale University Hospital and Medical Center, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees that it will monitor their work more closely because of their union activities.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 3, 1999.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten our employees that we will monitor their work more closely because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

THE BROOKDALE UNIVERSITY HOSPITAL
AND MEDICAL CENTER

³ If this Order is enforced by a judgment of the United States court of appeals, the words in the notice "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."